

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "WAGES" TO REMOVE THE REFERENCE TO THE REGULAR HOURLY RATE AS IT APPLIES TO WAGES PAID FOR COMMISSIONS, BONUSES, AND REMUNERATION FOR OVERTIME WORK, HOLIDAYS, VACATIONS, AND PERIODS OF SICKNESS; AMENDING SECTION 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer; or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration ~~at the regular hourly rate~~ for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other

1 expenses, as set forth in department rules;

2 (b) the amount of the payment made by the employer for employees, if the payment was made for:

3 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
4 Revenue Code;

5 (ii) sickness or accident disability under a workers' compensation policy;

6 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health
7 insurance for the employee or the employee's immediate family;

8 (iv) death, including life insurance for the employee or the employee's immediate family;

9 (c) vacation or sick leave benefits accrued but not paid;

10 (d) special rewards for individual invention or discovery; or

11 (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

12 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual
13 earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the
14 term of employment for the same employer is less than four pay periods, the employee's wages are the hourly
15 rate times the number of hours in a week for which the employee was hired to work.

16 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
17 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for
18 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period,
19 including periods of idleness or seasonal fluctuations.

20 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
21 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
22 subsection (4)(a), "concurrent employment" means employment in which the employee was actually employed
23 at the time of the injury and would have continued to be employed without a break in the term of employment if
24 not for the injury.

25 (b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be
26 based on the average actual wages in the volunteer's regular employment, except self-employment as a sole
27 proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

28 (c) The compensation benefits for an employee working at two or more concurrent remunerated
29 employments must be based on the aggregate of average actual wages of all employments, except for the wages
30 earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be

1 covered, from which the employee is disabled by the injury incurred."

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3 NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective July 1, 2007, and

4 applies to wages paid on or after July 1, 2007.

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